

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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KURT B. LUDLOW,

Plaintiff(s),

v.

SILVER STATE FINANCIAL SERVICES,  
INC., et al.,

Defendant(s).

Case No. 2:15-CV-235 JCM (NJK)

ORDER

Presently before the court is defendants Mortgage Electronic Registration Systems, Inc. and the Bank of New York Mellon's motion to dismiss complaint. (Doc. # 9). Plaintiff's response was due by July 6, 2015. Plaintiff has not filed a response or sought an extension from the court.

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim for relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "Where a complaint pleads facts that are 'merely consistent' with a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Id.* (citing *Bell Atlantic*, 550 U.S. at 557). However, where there are well pled factual allegations, the court should assume their veracity and determine if they give rise to relief. *Id.* at 1950.

Pursuant to Local Rule 7-2, an opposing party must file points and authorities in response to a motion and failure to file a timely response constitutes the party's consent to the granting of the motion and is proper grounds for dismissal. *See* LR IB 7-2(d); *United States v. Warren*, 601 F.2d 471, 474 (9th Cir. 1979). However, prior to dismissal, the district court is required to weigh several factors: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need

1 to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
 2 disposition of cases of their merits; and (5) the availability of less drastic sanctions.” *Ghazali v.*  
 3 *Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (citing *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir.  
 4 1986)).

5 In light of plaintiff’s failure to respond and weighing the factors identified in *Ghazali*, the  
 6 court finds dismissal of plaintiff’s complaint against the moving defendants appropriate.

7 Further Federal Rule of Civil Procedure 4(m) provides: “If a defendant is not served within  
 8 120 days after the complaint is filed, the court—on motion or on its own after notice to the  
 9 plaintiff—must dismiss the action without prejudice.”

10 Plaintiff filed his complaint on February 10, 2015. (Doc. #1). On June 15, 2015, the clerk  
 11 of the court provided notice to plaintiff that the action would be dismissed as to defendants Silver  
 12 State Financial Services, Inc., Recontrust Company, N.A., Old Republic Title Company of  
 13 Nevada, and National Default Servicing Corporation, if plaintiff did not file proof of service of  
 14 process by July 15, 2015. (Doc. # 8).

15 To date, plaintiff has failed to file proof of service with the court as to the above named  
 16 defendants.

17 Accordingly,

18 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendants Mortgage  
 19 Electronic Registration Systems, Inc. and the Bank of New York Mellon’s motion to dismiss  
 20 complaint (doc. # 9) be, and the same hereby is, GRANTED. Plaintiff’s complaint against  
 21 Mortgage Electronic Registration Systems, Inc. and the Bank of New York Mellon is  
 22 DISMISSED.

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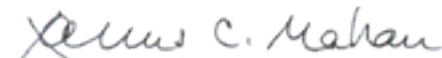
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1 IT IS FURTHER ORDERED that, under Federal Rule of Civil Procedure 4(m), plaintiff's  
2 complaint against defendants Silver State Financial Services, Inc., Recontrust Company, N.A., Old  
3 Republic Title Company of Nevada, and National Default Servicing Corporation be, and the same  
4 hereby is, DISMISSED without prejudice. The clerk is ordered to close the case.

5 DATED July 16, 2015.

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7 UNITED STATES DISTRICT JUDGE  
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